

1 WARM UP

2
3 THE COURT: Let's go on with your next question,
4 counsel.

5 MS. CARLTON: Thank you, your Honor.

6 THE COURT: Let's proceed.

7 BY MS. CARLTON: Q. Who arranged for the
8 interview of the defendant, Officer Porter?

9 A. I / don't know who actually set it up.

10 Q. Do you remember who was present at that time?

11 A. Not without looking at my report.

12 MS. CARLTON: Your Honor, if / there is no
13 objection, I would like the witness to refresh her
14 memory with her report.

15 THE COURT: Counsel, is there any objection?

16 MR. MURPHY: No, your Honor. I / would request
17 however that if there is going to be any reading from
18 the report, that the discovery page be identified for
19 the record.

20 THE COURT: I / don't believe counsel is asking to
21 read anything at this time.

22 MS. CARLTON: No, your Honor. I just wanted the
23 officer to refresh her recollection.

24 MR. MURPHY: No objection, / your Honor.

25 THE COURT: All right. Continue.

1 BY MS. CARLTON: Q. Do you find the paragraph
2 that reflects that in your report?

3 A. If I may have just one moment I believe / I can
4 find it.

5 THE COURT: Take your time.

6 THE WITNESS: Thank you, your Honor. Yes, I have
7 found it.

8 BY MS. CARLTON: Q. Who was present at the
9 interview on that date? /

10 A. The defendant was there, I was there and my
11 partner was also there.

12 Q. Was anyone else in attendance?

13 A. No one else attended the interview, but / there
14 were people who were walking by and probably heard what
15 we were saying.

16 MR. MURPHY: Objection. Speculation on the
17 witness' part.

18 THE COURT: Sustained.

19 BY MS. CARLTON: Q. Is anyone else listed / in
20 your report as being present?

21 A. No.

22 Q. Do you remember what time of day the interview
23 was conducted?

24 A. No, I don't, not without referring to / my
25 report.

1 MS. CARLTON: May she do so, your Honor.

2 MR. MURPHY: No objection.

3 THE COURT: That's fine.

4 THE WITNESS: Actually, I don't see the time listed
5 on this copy. There must be / another page that has
6 that. I am sorry.

7 BY MS. CARLTON: Q. That's all right. We will
8 check on that later and come back to it.

9 A. All right.

10 MS. CARLTON: Your / Honor, may I inquire when you
11 are planning to take the recess?

12 THE COURT: Are you requesting to take that now?

13 MS. CARLTON: If it is all right with / everyone,
14 yes.

15 MR. MURPHY: I never object to a break, your Honor.

16 THE COURT: All right. Ladies and gentlemen, we
17 will be in recess. Officer, you may step down. /

18 MR. MURPHY: Your Honor, may we address the court
19 once the jury has gone?

20 THE COURT: Yes, that's fine.

21 MR. MURPHY: I just wanted to inquire when was the
22 court expecting / to go over the jury instructions.

23 THE COURT: Are you both ready to discuss that or
24 do you need more time?

25 MR. MURPHY: We are ready.

1 MS. CARLTON: Yes, that's fine. /

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1 EXAM

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3 THE COURT: Good morning, ladies and gentlemen. I
4 will remind the witness that you have been previously
5 sworn.

6 THE WITNESS: Thank you.

7 THE COURT: Counsel, you can resume with your
8 direct / examination whenever you are ready.

9 MS. CARLTON: Thank you. I only have a few
10 questions left from last evening.

11 THE COURT: Let's proceed.

12 DIRECT EXAMINATION

13 BY MS. CARLTON: Q. Officer Porter, do you
14 remember Officer / Hilton asking any questions of the
15 defendant regarding the marijuana?

16 A. Yes, I do.

17 Q. And what statements, if any, did the defendant
18 make in regard / to the marijuana?

19 A. He replied that it was all his.

20 Q. Now, you already testified that you were the
21 person that collected or bagged all the / evidence and
22 took it to Santa Ana and booked it into property; is
23 that right?

24 A. Yes.

1 Q. And who took the marijuana over to the lab, /
2 the Orange County crime lab, to be tested?

3 A. There was only one bag that was analyzed and I
4 was the one who did that.

5 Q. All right. / Who was the person that picked up
6 the bag of marijuana from the lab and brought it to
7 court?

8 A. I also did that.

9 Q. You mentioned / that there was only one bag
10 that was analyzed; is that correct?

11 A. That's correct.

12 Q. And did you do that analysis?

13 A. No, I did not.

14 Q. Okay. / You weren't present when that was
15 done?

16 A. No, that's through the Orange County Sheriff's
17 Department.

18 Q. But, when you brought these bags to the crime
19 lab, / did you have any -- did you weigh them?

20 A. I weighed all of the evidence prior to them
21 being booked at the Santa Ana Police Department. /
22 After they were booked, I didn't weigh it again.

23 Q. You made a list of evidence and prepared a
24 report to that extent?

25 A. Yes, I did. /

1 Q. The list that you made indicates, for instance,
2 an item containing 2.61 ounces of marijuana in one
3 small plastic baggie. Did you weigh / that? Is that
4 the evidence that you weighed, or do you remember?

5 A. Yes, I measured all the marijuana.

6 Q. And it indicates that it was all / in plastic
7 baggies?

8 A. There was some loose marijuana that was
9 discovered on the apartment floor and I preserved that.

10 Q. Officer, when you measured that, did / you
11 weigh it in a bag?

12 A. I don't believe so. That was weighed by itself
13 because that's how it was found.

14 Q. That was about half / an ounce?

15 A. Yes.

16 Q. The rest of the marijuana that is identified as
17 being in plastic baggies with rubber bands, was that
18 evidence maintained in whatever / condition it was
19 found?

20 A. Yes, it was. I didn't disturb how it was
21 originally found.

22 Q. So, all of the amounts that you indicate in
23 your / report are the substance weighed in the bag that
24 it was in when you gathered it; is that right?

25 A. That's correct.

1 MS. CARLTON: I have nothing further, / your Honor.

2 THE COURT: Counsel.

3 MR. MURPHY: Thank you.

4 CROSS-EXAMINATION

5 BY MR. MURPHY: Q. Officer, you have no specific
6 training in ballistics or drug detection or anything,
7 do you?

8 A. No, I do not.

9 Q. So, / basically, your job with the police
10 department is to just pick up evidence and make sure
11 that it is properly packaged, if you will, and / then
12 delivering it to the crime lab?

13 A. That's correct.

14 Q. During the process of gathering the evidence,
15 did you perform what's called a gunshot residue test /
16 on the defendant?

17 A. Yes, I did.

18 Q. And can you explain what that involves?

19 A. The gunshot residue test is simply to determine
20 if a person has / possibly fired a gun. It would pick
21 up any debris or anything that was -- any powder that
22 was left on the victim or on the / gun. I mean on the
23 person that fired the gun, not the victim.

24 Q. Perhaps you can explain how the test is
25 performed.

1 A. Yes, I can. /

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1 BEGIN TYPING

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3 BY MR. MURPHY: Q. How is the test conducted?

4 A. We are provided an evidence kit from the
5 Orange County Sheriff's Department. Basically, it is
6 some little sticky vials that / are placed on the hands
7 to stick to any type of debris that is left.

8 Q. And then there is a process whereby you put
9 bags / or something over the individual's hands?

10 A. Yes. That would be the initial process to
11 preserve the person's hands. You would cover them with
12 a bag / so that if anything did fall off the hands, it
13 would land in the bag. Then, after that, you would
14 also try to remove evidence / from his hands.

15 Q. Okay. And was Mr. Gomez the only person on
16 whom you performed that test?

17 A. Are you asking about just that one day?

18 Q. Yes, I'm / speaking of just that day. It is
19 not within your purview to actually do that analysis?

20 A. No, I do not do the analysis. / I just perform
21 the test.

22 Q. When you were at the police station with Mr.
23 Gomez, were you in the room the entire time that
24 Officer / Hilton was talking to him?

25 A. During the interview, yes.

1 Q. Were you the individual who actually did the
2 translating?

3 A. Yes, I did.

4 Q. And was someone there / taking down notes?
5 Other than Officer Hilton, was there anyone there
6 either tape recording this conversation or taking it
7 down in shorthand?

8 A. I don't believe so. / I only saw him taking
9 notes. I didn't see a tape recorder.

10 Q. That would be Officer Hilton taking notes?

11 A. Yes.

12 THE COURT: Counsel, excuse me for a / brief
13 question here. Did you take any notes of your own?

14 THE WITNESS: No, I did not.

15 THE COURT: Did you, independent of Officer
16 Hilton, actually interrogate Mr. Gomez / at all?

17 THE WITNESS: No, I did not.

18 THE COURT: So you did not have any opportunity
19 where it was just the two of you in an interview room /
20 where you were asking him questions with respect to
21 this incident?

22 THE WITNESS: No, your Honor. The questions that
23 were asked were only the ones that Officer / Hilton
24 requested that I ask him.

25 THE COURT: Thank you.

1 BY MR. MURPHY: Q. Okay. You reviewed Officer
2 Hilton's report?

3 A. Yes, I did.

4 Q. You were there the entire time that this /
5 interview was being conducted?

6 A. Yes, I was.

7 Q. Your testimony is that Mr. Gomez said, "The
8 marijuana is all mine"? Is that what he said?

9 A. That's / correct.

10 Q. He didn't say, "It is mine and I am going to
11 sell some of it," or "It is mine and I am going to /
12 give it away," or anything of that nature?

13 A. No, he did not.

14 Q. He just said, "It is all mine"?

15 A. Right.

16 Q. Did Officer Hilton ask Mr. / Gomez, if you
17 recall, any questions with regards to firing the gun?

18 A. Yes, he did.

19 Q. And did Mr. Gomez deny firing the gun?

20 A. He denied / firing the .45 automatic gun.

21 Q. Officer Porter, that afternoon when you
22 collected the shell casings from the area, could you
23 tell at that time what / caliber those were?

24 A. No, I could not.

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1 Q. And when you gathered the evidence -- well, you
2 were responsible for gathering the other bullets; is
3 that right? /

4 A. Correct.

5 Q. Could you tell just by looking at them what
6 caliber they were?

7 A. The ones that had shell casings that were
8 collected outside -- I could / not identify those.
9 There was a box that was collected out of the closet,
10 and I identified those as being a .38 Special caliber
11 bullet. / There was a single bullet found on the bed
12 that I could not identify.

13 THE COURT: For clarification, you identified the
14 .38 caliber because it actually said / that on the box?

15 THE WITNESS: That's correct.

16 THE COURT: It had the caliber written on the box?

17 THE WITNESS: That's right.

18 BY MR. MURPHY: Q. All right. The gun that you
19 found on the / bed -- did you actually remove that from
20 the bed?

21 A. Yes, I did.

22 Q. Were you wearing any kind of protective
23 covering on your hands, any gloves / or something?

24 A. Yes, latex gloves.

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1 Q. Did you wear latex gloves to gather all the
2 evidence that you collected that day?

3 A. Yes.

4 Q. Would that include all / the bags of marijuana
5 that you retrieved from the apartment?

6 A. Yes, it absolutely would.

7 Q. So as soon as you arrived at the scene, you put
8 / on latex gloves and began to gather evidence?

9 A. When I began collecting evidence, that's when I
10 placed the gloves on.

11 Q. Okay. You mentioned weighing the / evidence.
12 What kind of scales are used to do that?

13 A. Our office provides us with a scale. It is
14 kept in our crime lab. I / am not familiar with the
15 calibrations or any other identification of the scale.

16 Q. So you don't know when it had last been
17 calibrated or anything / of that nature?

18 A. No, I do not.

19 Q. Do you remember what kind of a container you
20 put the loose marijuana in? Was it a paper / bag or
21 possibly a plastic baggie?

22 A. It was a brown paper bag. A lunch sack.

23 Q. Like a lunch sack?

24 A. Yes.

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1 Q. So the half ounce would / include the weight of
2 that lunch sack; is that correct?

3 A. No, I believe I just weighed that by itself,
4 because that's how I originally found / it. That was
5 loose on the floor.

6 Q. Did you subsequently scrape the marijuana off
7 the scale and into the bag?

8 A. Yes.

9 Q. When you discovered it / on the floor, what did
10 you put it in?

11 A. I believe at that time I collected it inside of
12 the trash bag, inside of the / brown paper bag.

13 Q. Do you carry those bags with you whenever you
14 are dispatched for investigation purposes?

15 A. Yes, I do.

16 Q. So your responsibility in connection / with
17 this case was merely to gather the physical evidence,
18 to record your findings, and to ensure that the
19 evidence was retained by your department? /

20 A. That's correct. I collected the evidence and
21 entered it into property storage. I also photographed
22 it.

23 Q. And did you have any -- maybe Ms. Carlton asked
24 / you this question. I apologize if she did.

1 Did you yourself transport all of this
2 evidence after the original booking date? Did you take
3 it / to the crime lab, in other words?

4 A. Yes, I did.

5 THE COURT: When did you do that?

6 THE WITNESS: I wrote down some notes here. I had
7 to call / my lab this morning to get the dates that it
8 was taken over there. The marijuana was transported on
9 April 25 at 9:00 o'clock in / the morning.

10 THE COURT: You did that yourself, personally?

11 THE WITNESS: Yes, I did.

12 BY MR. MURPHY: Q. And as part of doing that, it
13 is your responsibility to check it out of / Santa Ana
14 and transport it to the crime lab?

15 A. Yes, it is.

16 Q. The identification tags reflect whenever
17 someone checks the evidence out for review and / when
18 it's checked back in; correct?

19 A. Yes, that's correct.

20 Q. And since you delivered it to the lab, have you
21 had -- except for today or yesterday, / did you have
22 any other contact with the evidence?

23 A. No, I did not.

24 Q. But it was you who actually picked up the one
25 large envelope / and brought it for trial?

1 A. Yes, that's correct.

2 Q. Did you pick up all of them?

3 A. There was only one bag that was analyzed.

4 Q. And that's / the evidence you retrieved and
5 brought to court yesterday?

6 A. Correct.

7 MR. MURPHY: Nothing further, your Honor. Thank
8 you.

9 THE COURT: Any redirect examination?

10 MS. CARLTON: Briefly, your Honor.

11 REDIRECT EXAMINATION

12 BY MS. CARLTON: Q. Officer Porter, when / you
13 say that you weighed the marijuana in the baggie, you
14 are not talking about the brown bag, are you?

15 You are talking about the / clear
16 sandwich bag that's like this one that you see today?

17 A. Yes.

18 Q. That is People's 13?

19 A. That's correct.

20 Q. You are talking about the plastic sandwich /
21 baggies, not the brown bags that they are contained in;
22 right?

23 A. All the marijuana was weighed in the plastic
24 baggies they were found in, except / for the additional
25 marijuana that was loose in the apartment. So I had to

1 preserve that in my own bag, and then I weighed it / in
2 that brown bag.

3 MS. CARLTON: I have nothing further, your Honor.

4 THE COURT: Okay.

5 MR. MURPHY: Nothing further. I believe we are
6 ready for the defense witnesses.

7 MS. CARLTON: Your Honor, I'm / sorry. I neglected
8 to go into something on direct. May I reopen direct
9 briefly?

10 THE COURT: Yes, you may.

11 MS. CARLTON: I apologize, Mr. Murphy.

12 MR. MURPHY: No problem. Go ahead. /

13 REDIRECT EXAMINATION

14 BY MS. CARLTON: Q. Now, are you familiar with
15 the area around Sunview Drive in the city of Santa Ana?

16 A. Yes.

17 Q. How is it that you are familiar with / that
18 area?

19 A. Well, I was born and raised two blocks away. I
20 had to walk through that area to go to high school
21 every morning. / I have been an officer for Santa Ana
22 for a number of years and have made several hundred
23 arrests in that area for narcotics.

1 Q. Would / you characterize that area as a high
2 narcotics area, or perhaps a high crime area? How
3 would you characterize that area?

4 A. I would say smaller / dope sales occurring in
5 that area.

6 Q. What do you mean when you say "smaller dope
7 sales"?

8 A. Customers would drive up or walk up into the /
9 area knowing that they can find people selling drugs on
10 the street.

11 Q. All right. What type of drugs are found in
12 that neighborhood, if you / know?

13 A. Cocaine, speed, and marijuana.

14 Q. Were you also present or did you know that two
15 firearms were found on the bed in the bedroom, one /
16 being a .45 caliber --

17 MR. MURPHY: Objection, your Honor. Leading the
18 witness.

19 THE COURT: As to where it was observed?

20 MR. MURPHY: Whether the officer was actually
21 aware.

22 MS. CARLTON: I will rephrase / the question.

23 THE COURT: All right.

24 BY MS. CARLTON: Q. Did you see a weapon in the
25 bedroom?

1 A. Yes.

2 Q. Do you know where that weapon was located?

3 A. Yes.

4 Q. Where?

5 A. On the / bed.

6 MS. CARLTON: Nothing further.

7 THE COURT: Mr. Murphy, you can cross-examine.

8 RECROSS-EXAMINATION

9 BY MR. MURPHY: Q. Now, you have previously
10 described that area as having some gang activity; is
11 that correct?

12 A. There has / been some gang activity. There is
13 a gang that was popular two or three years ago, and
14 there are gang situations reported on a fairly /
15 regular basis in that area.

16 Q. And are those situations involving the use of
17 firearms?

18 A. They have in the past, yes.

19 Q. Have you ever talked to / individuals in the
20 area who say that they keep a gun for self-protection?

21 A. Usually as they are going off to jail, yes.

22 Q. Were you present / when the door was kicked
23 down?

24 A. I was outside the apartment.

25 Q. Did you watch that happen?

1 MS. CARLTON: I am going to object. Are we talking
2 about / the front door or southeast bedroom door?

3 THE COURT: Front door.

4 THE WITNESS: Yes.

5 BY MR. MURPHY: Q. So you watched it happen?

6 A. Yes.

7 Q. Did you examine the lock mechanism on that door
8 / at all?

9 A. I examined the damage because it is part of my
10 responsibility as a supervisor. I document any
11 personal property damage where we could / be liable at
12 a later time. But I don't recall checking to see if
13 the door was locked or unlocked.

14 Q. Do you recall what kind / of a lock it was?

15 A. No.

16 Q. You don't recall whether or not it was one that
17 had a deadbolt that required -- well, one that had / to
18 be unlocked with a key, or -- strike that.

19 There was damage to the lock mechanism; is
20 that correct?

21 A. The lock was broken.

22 Q. Did you / remove the lock or have anyone take
23 the lock from the door to keep it for evidence?

24 A. No.

25

1 Q. Did you ever have any contact with / the
2 residents of that apartment at a later time with
3 respect to repairing that door?

4 A. No.

5 Q. Did you have any knowledge as to whether or /
6 not anyone in your department had any contact with any
7 of the residents?

8 A. No, I don't.

9 Q. So at this time, Officer Porter, you don't know
10 / who the usual residents were, or who any of the other
11 residents were at 1529 Sunview?

12 A. That's correct, sir.

13 MR. MURPHY: Nothing further.

14 THE COURT: Counsel.

15 MS. CARLTON: Nothing further, / your Honor.

16 THE COURT: I just have a question before the
17 witness leaves. We have had exhibits marked for
18 identification and some entered into evidence already.
19 I / notice, however, there are some bags here that are
20 not marked. Are you planning on offering them, or is
21 the witness taking them back to / the station?

22 MS. CARLTON: Your Honor, I have no further physical
23 evidence. I can't speak for defense counsel.

24 MR. MURPHY: I don't have any need for those bags,
25 and / I won't be offering them.

1 THE COURT: Very well. Officer Porter, you are
2 ordered to return these bags to your property room.

3 THE WITNESS: Yes, your Honor.

4 THE COURT: Thank you. /
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